No. 22,425

United States Court of Appeals

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

WILLIAM A. MAGELLAN, JOSEPH S. MARTINAC,
FREDERICK T. BOROVICH, G. E. SKEWIS,
EUGENE DAHOUT, AND J. M. MARTINAC
SHIPBUILDING CORPORATION, d/b/a M.V. EASTERN PACIFIC;

and

FISHERMEN'S UNION LOCAL 33, INTERNATIONAL
LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION,

Respondents.

On Petition for Enforcement of an Order of the National Labor Relations Board

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
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FILED
MAR 4 1968
WM. B. LUCK, CLERK
MAR 6 1968

INDEX

AUTHORITIES CITED

Cases:

Page

Cases:

Statute:

nited States Court of Appeals

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat.

519, 29 U.S.C., Secs. 151, *et seq.*),[1] for enforcement of its order (R. 64-65, 24-48)[2] issued on March 31, 1967, against respondent (hereafter referred to as the "Employer" and Local 33). The Board's Decision and Order are reported at 163 NLRB No. 110. This Court has jurisdiction of the proceedings, the unfair labor practices having occurred within this judicial circuit.

STATEMENT OF THE CASE

I. THE BOARD'S FINDINGS OF FACT

The Board found that the Employer violated Section 8(a)(1), (2) and (3) of the Act by recognizing and entering into a contract with Local 33 while there existed a question concerning representation, by unlawfully assisting Local 33 prior thereto, and by enforcing and maintaining the contract which contained a union security clause. The Board also found that Local 33, by demanding and accepting said contract from the Employer under these circumstances, and by enforcing and maintaining the contract with a union security

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[1] The pertinent statutory provisions are reprinted in Appendix A, *infra*, pp. A-1 to A-5.

[2] References to the pleadings and decision and order of the Board, the Trial Examiner's recommended decision and order and other papers reproduced as Volume 1, pleadings, are designated "R." References to portions of the stenographic transcript reproduced pursuant to the Rules of this Court are designated "Tr." "G.C. Ex." refers to the General Counsel's exhibits, "R. Union Ex.." refers to respondent union's exhibits. References preceding a semicolon are to the Board's findings; those following are to supporting evidence.

clause, violated Section 8(b)(1)(A) and (2) of the Act. The facts upon which the Board based its findings are summarized below.

A. Background

William Magellan, and the other named respondents, are co-owners[3] and operators of the fishing vessel EASTERN PACIFIC which is engaged in tuna fishing on the high seas between Mexico and Chile (R. 25; Tr. 12-13). Magellan was the captain of the EASTERN PACIFIC and was in charge of hiring the crew (R. 26; Tr. 14-15). The EASTERN PACIFIC sailed on its maiden voyage on August 12, 1965 (Tr. 14).

While the EASTERN PACIFIC was being constructed, Magellan captained several other fishing vessels. Until May 1964 he was skipper of the SOUTHERN PACIFIC. When Magellan left the SOUTHERN PACIFIC he told the crew that they would be welcome to jobs on the EASTERN PACIFIC. Eight or nine of these men eventually became members of the EASTERN PACIFIC's first crew of eleven (R. 26; Tr. 18-20, 224). The SOUTHERN PACIFIC had a labor contract with Seine and Line Fishermen's Union of San Pedro, a union unrelated to the two unions here involved (R. 26; Tr. 22-23, 217).

After leaving the SOUTHERN PACIFIC, Magellan skippered the COIMBRA, which was under contract to Cannery

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[3] The owners' interests in the EASTERN PACIFIC are as follows: Martinac 40%; Magellan 25%; Borovich 20%; Skewis 5%; Dahout 5%; Martinac Shipbuilding Co. 5% (R. 26; Tr. 262).

Workers & Fishermen's Union of San Diego, AFL-CIO ("Cannery Workers"), which filed the instant unfair labor practice charges (R. 26; Tr. 218, 220). Thereafter, Magellan skippered the ANTOINETTE B, which was under contract to Local 33 (R. 27; Tr. 137-138). When he left that vessel, Magellan told the men – many of whom were with Magellan on the SOUTHERN PACIFIC – that they were welcome to sail on the EASTERN PACIFIC, which would be sailing soon. Eight of these men became part of the EASTERN PACIFIC's first crew (R. 27, 45; Tr. 225-226).

B. The Cannery Workers' discussions with Magellan concerning a contract covering the crew of the EASTERN PACIFIC

Between March and August 1965, several representatives of the Cannery Workers talked with Magellan on numerous occasions, and with co-owner Martinac on a few occasions, with respect to signing a contract with the Cannery Workers covering the crew of the EASTERN PACIFIC. These representatives were Jack Tarantino, vice president (Tr. 48); Joseph Silva, business agent (Tr. 64); Carl Marino, fish inspector and organizer (Tr. 74); and Lester Balinger, executive secretary and treasurer (Tr. 92). Magellan told Tarantino in early March that the crew of the EASTERN PACIFIC would be principally the crew of the ANTOINETTE B. In fact, the crew of the ANTOINETTE B had called Tarantino on board and told him they wanted to be covered on the EASTERN PACIFIC by the Cannery Workers' insurance rather than receive the benefits offered by Local 33. Magellan was aware of the crew's wishes in this respect (Tr. 136-138).

In his discussions with Cannery Workers' officials, Magellan told them that the Cannery Workers "had the crew" and would get a contract when the time was right (R. 30; Tr. 49-59, 69-71, 75-82, 95-96). For example, in April, Magellan told Tarantino: "Don't worry. The crew belongs to you guys. When it is time, we will get together" (R. 32; Tr. 53). Magellan reiterated this to Tarantino on several occasions before and after May 10 (R. 32; Tr. 52, 54, 56, 59). In March, Magellan also told Martino, in regard to signing a contract with Cannery Workers: "Well, don't worry about it. The boat is not yet ready. You have nothing to worry about. You have all the crew from San Diego on it" (R. 33; Tr. 77). Again, in June, when Marino asked about a rumor of a meeting between Magellan and Local 33, Magellan said that he shouldn't worry, that when the boat was ready they would "talk about it" (R. 33; Tr. 82). Also in June, Magellan had a discussion with Balinger about signing a contract. Magellan told Balinger: "Let us don't worry about a thing. You got all the guys aboard the boat. When the boat gets down here we will sit down and negotiate an agreement. Don't worry about a thing" (R. 33; Tr. 94-95).[4]

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[4] At the hearing, Magellan admitted that he told both Balinger and Tarantino that he would sign a contract with the Cannery Workers (R. 34; Tr. 251, 256).

C. The practice of multiple union membership in the industry

Crew members of fishing vessels often work on different vessels, which may be under contract with one of at least three different unions. Thus, as shown, the SOUTHERN PACIFIC, the COIMBRA, and the ANTOINETTE B, the three vessels Magellan skippered prior to the EASTERN PACIFIC, each had contracts with a different union. Since contracts in the industry commonly contain union-security clauses, many employees retain membership in two or more unions at the same time (R. 36; Tr. 124, 163).

Cannery Workers has a $125 initiation fee, a $1.00 monthly fee to remain in good standing, and a discretionary $125 reinstatement fee. Continuing membership rights include death benefits, emergency fund benefits, a health and welfare program, and the ability to file unemployment compensation claims through the Cannery Workers under California Unemployment Compensation Law procedure (R. 36; Tr. 73, 121-122, 133).

Under the Cannery Workers bylaws a member remains in good standing until he is six months delinquent in dues payments, at which time he is automatically expelled (R. 36; Tr. 114). When the eleven-man crew of the EASTERN PACIFIC was hired on May 3, 1965, eight of them were members in good standing of the Cannery Workers: two of them were fully current in the payment of dues, three were paid up through March 31, and three paid up through December 31, 1964. A ninth member of the eleven-man crew had been a member, but had not paid dues for over six months (R. 37, 46; Tr. 107-117).

D. The crew members of the EASTERN PACIFIC sign up with Local 33; Magellan agrees to, and then signs, a contract with Local 33

The launching of the EASTERN PACIFIC took place on April 14, 1965, and representatives of both Local 33 and the Cannery Workers were invited (R. 5; Tr. 46, 65). As set forth above, the crew was hired on May 3 (R. 28; Tr. 16-17, 42-43, 215). That same day, Rudy Crnko, a representative of Local 33, appeared at the room where work on the nets had already begun. Crnko asked Magellan if he could talk to the men. Crnko was told he could do so during lunch. At lunchtime Magellan called the men into a group and introduced Crnko as "the big shot from the I.L.W.U.," referring to Local 33's parent body. Crnko spoke to the men for about an hour, including a question-and-answer period. When Crnko had concluded, the men asked Magellan what he thought. Magellan replied that it made no difference to him but that he "did prefer" the I.L.W.U. (R. 28; Tr. 226-229, 271-272, 279-281). Magellan then stood within two feet of the men as eight of them signed a statement authorizing Local 33 to represent them (R. 29; Tr. 230-231, 268-271, R. Union Ex. 1).[5] After the men signed, Magellan reiterated his preference for Local 33 (Tr. 236).

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[5] The parties stipulated as follows: Concerning the voluntariness of these signatures on Respondent Union's Exhibit 1, it is stipulated that the only issues to be litigated here are the effect of Mr. Magellan's statement of preference before these signatures were affixed to the document on May 3, 1965, and his physical presence in the room at a distance close enough to observe the act of signing and to be observed by the signers, and that otherwise no inference will be drawn or urged concerning his physical proximity to the signers (R. 29; Tr. 303-304).

On Sunday, May 4, John Boyd, secretary-treasurer of Local 33, and Magellan flew from Los Angeles to Tacoma, Washington. They met there with co-owner Marumat to discuss a form contract to cover the crew of the EASTERN PACIFIC. Certain changes were made in the contract and they discussed the possibility of substituting Blue Shield coverage for the health and welfare plan in the form contract. It was agreed that this would be done, if possible; otherwise the coverage would be as originally set forth. The contract contained a union-security provision requiring union membership after 30 days of employment (R. 29; Tr. 243-244, 301-302, G.C. Ex. 4).

On May 14 the parties agreed that they would prepare and sign the contract agreed upon within two weeks. Due to illness in Boyd's family, the written agreement, which contained the health and welfare clause originally proposed, was not signed until June 19 (R. 29; Tr. 244-245, 302, G.C. Ex. 4).

II. THE BOARD'S CONCLUSIONS AND ORDER

The Board found that the Employer violated Section 8(a)(1), (2) and (3) of the Act by recognizing and entering into a contract with Local 33 while there existed a question concerning representation, by unlawfully assisting Local 33 prior thereto, and by enforcing and maintaining the contract which contained a union security clause. The Board also found that Local 33 violated Section 8(b)(1)(A) and (2) of the Act by demanding and accepting said contract from the Employer under these circumstances, and by enforcing and maintaining the contract with a union security clause (R. 19).

The Board's order directs the Employer to cease and desist from recognizing or contracting with Local 33 as the statutory representative of the crew of the EASTERN PACIFIC until certified by the Board, from enforcing or maintaining the contract entered into on June 19, 1965, with Local 33 unless and until Local 33 is certified by the Board, and from in any like or related manner interfering with, restraining or coercing the crew members of the EASTERN PACIFIC in the exercise of their Section 7 rights. Affirmatively, the Employer is to withdraw and withhold all recognition from Local 33 until it is certified, and to post the appropriate notices (R. 20).

The Board order directs Local 33 to cease and desist from demanding or accepting recognition from or contracting with the Employer unless and until it is certified, from enforcing or maintaining its collective contract with the Employer until it is certified, and from in any like or related manner restraining or coercing crew members of the EASTERN PACIFIC in the exercise of their Section 7 rights. Affirmatively, Local 33 is required to post the appropriate notices (R. 21).

ARGUMENT

THE BOARD PROPERLY FOUND THAT THE EMPLOYER AND LOCAL 33 VIOLATED, RESPECTIVELY, SECTION 8 (a) (1), (2) AND (3) AND 8 (b) (1) (A) AND (2) OF THE ACT BY ENTERING INTO A COLLECTIVE BARGAINING AGREEMENT AT A TIME WHEN A REAL QUESTION CONCERNING REPRESENTATION EXISTED

As shown in the Statement, Cannery Workers and Local 33 were both seeking a contract to cover the Employer's

newly-constructed tuna vessel, the EASTERN PACIFIC. In early March 1965, before the EASTERN PACIFIC was completed, William Magellan, co-owner and captain-to-be of the EASTERN PACIFIC, told Tarantino, vice-president of the Cannery Workers, that the crew of the EASTERN PACIFIC would consist primarily of Magellan's present crew on ANTOINETTE B and that the men wanted to be in the Cannery Workers' insurance group. Thus, although the members of the ANTOINETTE B's crew were currently covered by a contract with Local 33, they called Tarantino on board and told him that they wanted to be covered by the Cannery Workers when they signed on the EASTERN PACIFIC. Thereafter, representatives of the Cannery Workers repeatedly checked with Magellan while the EASTERN PACIFIC was being constructed. The representatives reiterated that the crew of the new vessel expected to be covered by the Cannery Workers. Magellan consistently replied that he knew that the Cannery Workers "had the men" who would be on the EASTERN PACIFIC, and that it would get a contract when the time was right. The crew was hired and work began on the nets on May 3, 1965. Of the eleven crewmen, eight were members in good standing of the Cannery Workers, a fact known by Magellan as he himself was currently a member of that union (Tr. 70, 89-90, 215).

The Employer, therefore, had acknowledged the legitimacy of the Cannery Workers' representational interests in the EASTERN PACIFIC's crew, and on May 3 had knowingly engaged a crew comprised of a wide majority of Cannery Workers' members. On that date, however, Rudy Crnko, a representative of Local 33, appeared and asked Magellan if he could talk to the men. At lunchtime Magellan called the men

together and introduced Crnko as "the big shot from the I.L.W.U. [Local 33]." Crnko spoke for an hour and when he concluded, the men asked Magellan what he thought. Magellan, though adverting to his alleged indifference, stated that he "did prefer" Local 33. Then, as Magellan stood some two feet away, Crnko successfully obtained eight signatures on a statement which authorized Local 33 to represent the crew. A week later, on May 10, the Employer and Local 33 agreed to all the terms of a contract, including a union-security clause, and signed the agreement a few weeks later.

Under the *Midwest Piping* rule,[6] as recently explained by this Court (*Retail Clerks Union, Local 770 v. N.L.R.B.*, 370 F. 2d 205, 207),

> An employer faced with conflicting claims of two or more rival unions which give rise to a real question concerning representation may not recognize or enter into a contract with one of these unions until its right to be recognized has finally been determined under the special procedures provided in the Act.

As the courts have stated time and again, this rule imposes a form of neutrality regarding the employees' choice of bargaining representatives and prohibits an employer, faced with conflicting claims, from treating one of the rivals in such a manner as to give it an improper advantage or disadvantage

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[6] *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060. See also, *Novak Logging Co.*, 119 NLRB 1573, 1574.

in its contest for the employees' favor. *N.L.R.B. v. Air Master Corp.*, 339 F. 2d 553, 557 (C.A. 3); *Iowa Beef Packers, Inc. v. N.L.R.B.*, 331 F. 2d 176, 182 (C.A. 8); *N.L.R.B. v. Signal Oil & Gas Co.*, 303 F. 2d 785, 786-788 (C.A. 5); *St. Louis Independent Packing Co. v. N.L.R.B.*, 291 F. 2d 700, 704 (C.A. 7). *Cf. Pan American World Airways, Inc. v. International Brotherhood of Teamsters, et al.*, ___ F. Supp. ___ (S.D. N.Y.), 66 LRRM 2559, 2566-2567. Since executing a contract constitutes strong support to one union, and gives it a marked advantage, the employer and the unions must refrain from such action until the representation question has been resolved in an impartial and reliable manner by the Board's election processes. *N.L.R.B. v. Signal Oil & Gas Co., supra*, 303 F. 2d at 787; *N.L.R.B. v. National Container Co.*, 211 F. 2d 525, 536 (C.A. 2).

Under the circumstances here, there can be little doubt that when the Employer entered into a collective bargaining agreement with Local 33, Cannery Workers had at least presented a colorable claim of majority representation. The record is uncontroverted that Magellan knew that the Cannery Workers had a majority of the crew of the EASTERN PACIFIC on its membership rolls and that it was seeking a contract. Moreover, Local 33 received more than just the advantage of premature recognition and a bargaining agreement. At the most critical stage, the day the men began work, Magellan told them that he preferred Local 33, and then stood next to them as they signed an authorization statement. The Board properly held that Magellan's action tainted the employees' signatures with unlawful managerial influence, by depriving them of the complete freedom of choice which the Act guarantees. *See I.A.M. v. N.L.R.B.*, 311 U.S. 72, 78; *N.L.R.B.*

v. Link Belt, 311 U.S. 584, 598. In an atmosphere of competition between rival unions, "the employees are sensitive to weight thrown by their employer in favor of one organization as against another, even though the suggestion of preference be subtle or slight." *Iowa Beef Packers, Inc. v. N.L.R.B., supra,* 331 F. 2d at 184, citing *Elastic Stop Nut Corp. v. N.L.R.B.,* 142 F. 2d 371, 375 (C.A. 8), cert. denied, 323 U.S. 722. See also R. 41, n. 51, quoting from *N.L.R.B. v. Burke Oldsmobile,* 288 F. 2d 14 (C.A. 2).

In sum, rather than assisting Local 33, it was incumbent upon the Employer to stay its hand and allow the Board processes to determine a representative through an election. Instead, at the precise moment when the employees were most vulnerable, Magellan improperly brought managerial weight to the support of Local 33. The Employer then agreed upon, and executed, a contract with Local 33, unlawfully arrogating to itself the determination of the employees' bargaining representative.[7]

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[7] By such action an employer interferes with employee rights and gives unlawful assistance, in violation of Section 8(a)(1) and (2). Where the agreement, however, contains a union security clause requiring membership in the favored union, as here, the employer also discriminates in violation of Section 8(a)(3), and the contracting union is a party to the discrimination and violates employee rights, in violation of Section 8(b)(1)(A) and (2). *N.L.R.B. v. Fiore Bros. Oil Co.,* 317 F. 2d 710 (C.A. 2). See, *N.L.R.B. v. Seine and Line Fishermen's Union of San Pedro, et al. (Paul Biazevich, et al.),* 374 F. 2d 974, 977 (C.A. 9), cert. denied, ____ U.S. ____ .

Local 33's main defense, therefore, was correctly rejected on factual grounds.[8] For this is not a case where the contracting union had been so clearly designated by the employees as to preclude any colorable claim by another union. Initially, in such cases the absence of any real question concerning representation resulted from employee expression of majority choice which was made without any improper employer influence. See, *e.g., Retail Clerks Union, Local 770 v. N.L.R.B., supra,* 370 F. 2d at 207, n. 2; *N.L.R.B. v. Air Master Corp., supra,* 339 F. 2d at 182. As shown, the employees had not freely manifested their desire to be represented by Local 33. That union alone had not by legitimate "spadework" been made the clear selection of the employees. *Retail Clerks Union, Local 770 v. N.L.R.B., supra,* 370 F. 2d at 208. Furthermore, unlike the claims of the disfavored unions in the cases relied upon, the outstanding claim by Cannery Workers was demonstrably more than just a "bare assertion of representation." *(Ibid.)*

Local 33 also contended, before the Board, that no question concerning representation existed because the employees' membership in the Cannery Workers did not, in the circumstances presented here, constitute selection of a representative and bargaining authorization. The Board recognized that a practice of multiple union membership existed in the fishing

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[8] The Employer accepted the Board's adoption of the Trial Examiner's adverse decision and order by not filing any exceptions thereto. See *e.g. N.L.R.B. v. I.A.M., Lodge 942, AFL-CIO,* 263 F. 2d 796, 798-799 (C.A. 9), cert. denied, 362 U.S. 940. The Board recognizes, however, that a holding by the Court that Local 33's defenses have merit would be a determination that the record does not support a finding of unlawful conduct.

industry of Southern California, to enable fishermen to protect themselves under union security contracts when they work on boats under the jursidiction of different unions. The Board also acknowledged that one of the reasons the crew of the EASTERN PACIFIC were currently members of the Cannery Workers might well have been the benefits derived from continuing membership, or the slight expense of paying monthly dues of $1 compared to the reinstatement fee of $125 (*supra,* p. 6). The assertion, however, that union membership in these circumstances should be ignored misconceives the duty of neutrality imposed by the *Midwest Piping* rule.

As the Board noted (R. 37), the issue is not whether the Cannery Workers had been conclusively designated as bargaining representative, but whether that union had sufficiently demonstrated a colorable claim to raise a real question concerning representation. As we have shown, the Cannery Workers had made such a claim. Indeed, Magellan's repeated response to the representation claims of Cannery Workers' officials, made before the assistance to and precipitate recognition of Local 33 on May 3, are wholly inconsistent with the assertion that membership is not attended by any grant of bargaining authority. Magellan, well aware that a majority of the employees picked for the EASTERN PACIFIC were members of Cannery Workers, told the officials that he knew they "had the crew" (*supra,* p. 5).

Finally, as the Board noted (R. 39), it is immaterial that Cannery Workers' rival claim originated before May 3, when the crew of the EASTERN PACIFIC began work; or that an election petition was not filed and may not have been entertained in the bargaining unit until after that date. The

Cannery Workers could surely act to build their representative status before the vessel began operations, and to put the Employer on notice of his duty when either an election or a collective bargaining agreement became permissible. Accordingly, there is no merit in the contention that the Board should consider only what the parties did after the crew began working on May 3, and place no reliance on events occurring before that date. Furthermore, the duty of neutrality created by rival union claims may arise though "[no] petition for an election had been filed by either local, or by the employer as provided by [Section] 9(c)(1) . . ." *N.L.R.B. v. Burke Oldsmobile, Inc., supra,* 288 F. 2d at 16.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

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Attorneys,
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February 1968.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court, and in his opinion the tendered brief conforms to all requirements.

MARCEL MALLET-PREVOST
Assistant General Counsel,
National Laobr Relations Board.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject

to rules and regulations made and published by the Board pursuant to section 6. an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay:

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*. That nothing in this Act. or in any other statute of the United States. shall preclude an employer from making an agreement with a labor organization (not established. maintained. or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement. whichever is the later. (i) if such labor organization is the representative of the employees as provided in section 9 (a). in the appropriate collective-bargaining unit covered by such agreement when made. and (ii) unless following an election held as provided in section 9 (e) within one year preceding the effective date of such agreement. the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members. or (B) if he

has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to render the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7; *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring of retaining membership;

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

* * * * *

[Sec. 10] (e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceeding s, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, th e court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such tempoerary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member,

agent, or agency, and to be made a part of the record . . . . Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the . . . Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

* * * * *

APPENDIX B

Pursuant to Rule 18.2 (f) of the Rules of the Court:

(Page references are to the stenographic transcript)
(Board Cases Nos. 21-CA-6896, CB-2620)

GENERAL COUNSEL'S EXHIBITS

No.	Identified	Received
1(a) through 1(q)	7	7
2(a) through 2(d)	103	106
2(e) through 2(i)	104	106
2(j)	105	106
3	15	23
4	24	43
5	26-27	98
5(a)	97	98
6	100	100
7	101	102

RESPONDENT UNION'S EXHIBITS

No.	Identified	Received
1	230	231

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